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REMARKS

The applicants respectfully acknowledge the Examiner's reopening of prosecution in the subject application and further appreciate the Examiner's diligence in ferreting all prior art relevant to the present application.

In view of the new prior art provided by the Examiner, the applicants have amended the claims to more clearly define and distinguish the present invention.

Specifically, independent claim 1 has been amended to define a chamber with a pocket extending outwardly from the casing which is sized and shaped to capture and contain a pre-selected volume of fluid sample. The volume of sample provides sufficient hydrostatic pressure to displace air and fill the inlet with a fluid sample. Support for this amendment is found in the original specification on page 3, beginning at line 4. This structure enables the filling of all inlets 58 consistently with small volumes of test fluid. This results in acceptable test results as pointed out in the original specification on page 13 at line 10.

This structure is clearly different from the structure of the art cited and functions in a manner different than any of the art cited to result in an effective analytical test device.

Turning specifically to the new rejections by the Examiner, claims 1 and 22-25 have been rejected by the Examiner under 35 USC 102(b) as being clearly anticipated by U.S. Patent No. 5,948,695 to Douglas, et al. In this rejection, the Examiner states that Douglas, et al. teaches a diagnostic test device (1) comprising a capillary tube (2), a support member (3), a handle portion (15), vent holes (8) and (9), slot (16), spreading/filter layer (4) which is in communication with reagent layer (5), and carrier layer (6).

The applicants respectfully traverse this rejection on the basis of the amended claims.

As set forth in the appeal brief filed December 15, 2003, the test for anticipation requires that a single prior art reference discloses, expressly or under principles of inherency, each and every element of the claimed invention. RCA Corp. v. Applied Digital Data Systems, Inc., 221 USPQ 385 (Fed. Cir. 1984); In re Sun, 31 USPQ 2d 1451

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(CAFC 1993); Advanced Display Systems, Inc. v. Kent State University, 540 USPQ 2d 1673 (CAFC 2000).

Further, the applicants submit that anticipation must meet strict standards and unless of the same elements are found exactly the same situation and united in the same way to form identical function in a single prior art reference there is no anticipation. Tights, Inc. v. Acme-McCary Corporation, et al., 191 USPQ 305 (CAFC 1976).

With this criteria in mind, the present invention, as presently claimed, includes a chamber defining a pocket extending outwardly from the casing and sized and shaped to capture and contain a pre-selected volume of fluid sample with this volume being structurally claimed as providing sufficient hydrostatic pressure to displace air and fill the inlets with the fluid sample. This structure results in the advantages hereinabove pointed out and discussed in the original specification.

It must be abundantly clear that the Douglas, et al. reference provides no such structure. The Examiner is attempting to equate the capillary tube 2 of Douglas, et al. with the pocket of the present invention. However, this equivalence is unfounded inasmuch as in Douglas, et al. the sample is wicked into the capillary tube, see column 7, line 65. Further, as taught by Douglas, et al. in column 8, line 14 a spreading layer/filter layer 4 provides capillary action to help draw the sample through the capillary tube 2.

Accordingly, this structure can in no way provide the sufficient hydrostatic pressure to displace air and fill the inlets as does this structure of the present invention.

Lacking any teaching or suggestion of the structure of the present invention which includes a chamber defining a pocket extending outwardly from the casings sized and shape to capture and contain a volume fluid sample for providing hydrostatic pressure to displace air and fill inlets, a rejection under 35 USC 102(d) of claims 1 and 22-25 is unsustainable.

While not specifically addressed by the Examiner, claim 23, as amended, includes a rail for supporting the casing on a generally horizontal surface with the pocket disposed in a spaced apart relationship with the horizontal surface. Douglas, et al. provides no teaching, suggestion, or hint whatsoever of any such structure. Accordingly, with specific reference to claim 23, a finding of anticipation under 35 USC 102(b) on the basis of the Douglas reference is not sustainable.

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Accordingly, the Examiner is respectfully requested to withdraw the rejection of claims 1 and 22-25 under 35 USC 102(b) on the basis of the Douglas, et al. reference.

Claims 1 and 21-25 have been rejected under 35 USC 103(a) as being unpatentable over U.S. 6,203,757 to Lu, et al. in view of the Douglas, et al. reference.

In this rejection, the Examiner states that Lu, et al. teaches a diagnostic testing (20) comprising a porthole (24) to receive a sample that is in fluid communication with the sample receiving/distribution web (25) that distributes the sample to the test strips (26). There is a base member (23) that supports the web (25) and strips (26) that is covered by the faceplate (22). The claimed casing has been read on the taught base member (23) mated with the faceplate (22). The claimed pocket has been read on the taught porthole (24). The claimed sample metering means has been read on the taught receiving/distribution web (25). The claimed testing assembly has been read on the taught test strips (26).

The Examiner acknowledges that Lu, et al. is silent to the claimed "pocket extending outwardly from the casing" and relies on Douglas, et al. for such a teaching.

However, as hereinabove pointed out, the pocket defines a volume for providing sufficient hydrostatic pressure to displace air and fill the inlets. This structure is not taught or suggested by the Lu, et al. reference and accordingly the combination of Lu, et al. and Douglas, et al. does not provide the basis for prima facie case of obviousness under 35 USC 103(a).

Again, with specific reference to claim 23, there is no structure taught or suggested by Lu, et al. for supporting the casing in a generally horizontal surface with the pocket disposed in a spaced apart relationship with the horizontal surface.

Therefore, the applicants submit that the Lu, et al. and Douglas, et al. references do not provide the basis for a prima facie case of obviousness under 35 USC 103(a).

In view of this lack of teaching, the applicants respectfully request the Examiner to withdraw the rejection of claims 1 and 21-25 under 35 USC 103(a) on the basis of the Lu, et al. and Douglas, et al. references.

Claim 21 has been separately rejected by the Examiner under 35 USC 103(a) as being unpatentable over Lu, et al. in view of Douglas, et al. and further in view of U.S. 5,976,895 to Cipkowski. In this rejection, the Examiner states that Cipkowski teaches a

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test device comprising a test card (25) that encases a plurality of test strips (26-30) with apertures (51) communicating with each of the corresponding test strips (26-30).

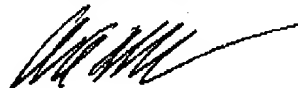
The Examiner states that it is advantageous to give the sample direct access to each test strip to speed the results of the test and require less sample and accordingly, it would have been in the skill of the art to further modify Lu, et al. in view of Cipkowski and prove a plurality of individual apertures to each of plurality of test strips to gain the advantages.

In traversing this rejection, the applicants reiterate the hereinabove presented arguments and submit that in Cipkowski, et al. reference does not teach or suggest a chamber defining a pocket extending outwardly from the casing and shaped to capture and contain a volume of fluid sample for providing sufficient hydrostatic pressure to replace air and fill inlets with fluid sample. Therefore, the applicants submit that the Examiner has not made a prima facie case, therefore the rejection of claim 21 under 35 USC 103(a) on the basis of the Lu, et al., Douglas, et al., and Cipkowski, et al. references.

Claim 21 has been further rejected by the Examiner under 35 USC 103(a) as being unpatentable over Douglas, et al. in view of Cipkowski, et al. In traverse of this rejection, the applicants reiterate the hereinabove submitted arguments and further assert that the Examiner has not made a prima facie case of obviousness on the basis of the Douglas, et al. and Cipkowski references for rejecting claim 21 under 35 USC 103(a).

In view of the arguments hereinabove set forth in amendment to the claims, it is submitted that each of the claims now in the application define patentable subject matter not anticipated by the art of record and not obvious to one skilled in this field who is aware of the references of record. Reconsideration and allowance are respectively requested.

Respectfully submitted,



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